

LEGAL REPRESENTATIVES OF CAPTAIN PIERRE AYOTT.

[To accompany Bill H. R. No. 256.]

MARCH 2, 1860.

Mr. FERRY, from the Committee on Revolutionary claims, made the following

REPORT

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Captain Pierre Ayott, report:

That this claim was favorably reported on the 29th day of May, 1858. That report, with the evidence, has been re-examined, and your committee, concurring entirely with that report, adopt it and report a bill in all respects the same as the one then reported.

IN THE HOUSE OF REPRESENTATIVES, *May 29, 1858,*

Mr. DAWES, from the Committee on Revolutionary Claims, submitted the following report:

The Committee on Revolutionary Claims, to whom was referred the petition of the administrator of Pierre Ayott, a revolutionary officer, having had the subject matter of said petition under consideration, report:

That on the 19th of February last adverse reports of the Court of Claims, Nos. 92 and 93, were taken up from House calendar in Committee of the Whole House on the private calendar, and the reports concurred in without being read or stated.

It appears from the printed documents of the House, containing the report of the Court of Claims in case No. 92, that the administrator of Pierre Ayott, a captain in the revolution, had entered a claim against the United States to recover the half-pay for life promised by the following resolutions:

“RESOLUTION in Congress, October 21, 1780.

“*Resolved*, That the officers who shall continue in the service to the end of the war shall also be entitled to half-pay during life, to commence from the time of their reduction.”

Extract from "RESOLUTION in Congress, March 22, 1783.

"*Resolved*, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half-pay promised for life by the resolution of the 21st day of October, 1780."

"RESOLUTION in Congress, March 8, 1785.

"*Resolved*, That the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the half-pay or commutation with those officers who retired under the resolves of the 3d and 21st October, 1780."

And another claim, for the loss of two lots of land valued at \$4,000, which was confiscated in consequence of his having taken up arms against Great Britain, and in favor of the American cause, which was induced by the promises of protection and remuneration by Congress and its agents at the time; and, subsequently, by resolves of Congress of the 23d of April, 1783, as follows:

"*Resolved*, That the memorialists be informed that Congress retains a lively sense of the services the Canadian officers and men have rendered the United States, and that they are seriously disposed to reward them for their virtuous suffering in the cause of liberty; that they be further informed that whenever Congress can consistently make grants of land they will reward in this way, as far as may be consistent, the officers, men, and others, refugees from Canada."

It has been suggested to your committee that this case, and case No. 93, of adverse report of the Court of Claims, was considered and argued together, and became consolidated in one case, though they appear by different numbers; and this would seem to be the fact, as the testimony was used in both cases, and the evidence chiefly printed in the documents of case No. 93. But it being claimed there was testimony on the files not printed with the documents, your committee directed a note to the clerk of the Court of Claims requesting him to furnish the committee with all the evidence in his office, which request was complied with; and it appears evident that there was material evidence not transmitted or embraced in the report to Congress when this case was considered on the 19th of February last.

It appears further from the printed documents of the House containing the report of the Court of Claims in case No. 93, that the same administrator of Pierre Ayott preferred his petition to the Court of Claims founded upon the following resolve of Congress, viz:

"By the United States in Congress assembled, September 14, 1785, on a report from the Secretary of War, to whom was referred a memorial of Pierre Ayott—

"*Resolved*, That the commissioner of army accounts, in liquidating the claims of Pierre Ayott, allow him the pay and subsistence of a captain for the year 1776, deducting three hundred dollars advanced

him by the resolution of the 24th of February last ; that the further sum of one hundred and fifty dollars be allowed him in full of all expenses incurred by him in the service of the public ; that he be allowed rations until the first day of June next, and that the same quantity of lands be assigned to him as may be assigned to the heads of other Canadian families.

“ CHAS. THOMPSON, *Secretary.*”

The petitioner states applications had been made to the several departments for the satisfaction of this claim without obtaining it, and that the claim remains unsatisfied in every particular, qualified by the following statement of the claimant's case under said resolve of Congress.

1. This claim is founded on a special resolve of Congress, September 14, 1785.—(See Journals of Congress, 1774 to 1788, vol. 4. p. 570.)

2. The claim being a subsisting one, and no accounting officer acknowledging authority to pay or execute it, provision should be made by Congress through this court.

3. The claimant asks the following interpretation of the resolve, as stated in account, viz:

The United States to Captain Ayott, Dr.

To captain's pay (\$40 per month) for the year 1776.....	\$480 00
To subsistence, three rations to captain, 30 cents per day....	109 05
To expenses incurred.....	150 00
To rations for 8½ months.....	76 56
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	815 06

Cr.

By advance on resolution, February 24 last.....	300 00
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	515 06
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To interest to United States land, 300 acres.—(Resolution of Congress, September 16, 1776.)

To 1,500 acres.—(Act March 27, 1783, New York.)

The Court say, if the petitioner claims an interest in the land, the question would then arise whether it is barred by the act of April 7, A. D. 1798, and the act of February 25, A. D. 1810.—(1 Statutes at Large, pp. 547, 548, 549; 2 Statutes at Large, pp. 556, 557.)

After stating the evidence, the Court again say: “ In addition to these considerations, the present claim is barred by the act of February 12, A. D. 1793.”—(1 Stat. at Large, p. 301, ch. 5.)

These cases now come before your committee, on petition referred to them, to restore them to the calendar, and praying that they may be decided on their merits without the interposition of the statute of limitations.

And your committee having had referred to them two cases of like

character to inquire into the merits, where the adverse report of the Court of Claims on the statute of limitations was pleaded in bar, and the House refused to sustain such plea. Your committee consider this a proper case for their consideration, and, according to the prayer of the petition, they have examined the merits of the several claims presented for their examination, and they report the following facts :

1. *The claim for half-pay for life.*—It appears by a letter from Colonel E. Antill, of Colonel Hazen's regiment, dated at Point Levy, April 14, 1776, addressed to Captain Pierre Ayott, while the American army lay near Quebec, that said Ayott was then filling up his company in the new regiment under Colonel Hazen. The letter reads as follows : " I received your letter, and as respects the subject of your demand for the sum to finish the payment to those who wished to leave, I regret that you did not send me the roll certified by the officer named for that purpose. The general cannot give money without it. For the present, I beg of you not to lose any time, and render all diligence down there to finishing the filling up of your company. At your return all will go well. I hope that everybody will be pleased with you, and you with me. The writing which I gave you may be of use to you respecting the money ; in fine, do for the best. Let me hear from you."

After the war, under date of June 1, 1784, Edward Antill, lieutenant colonel of said regiment, certifies that Captain Peter Ayott was one of the oldest captains in the late Brigadier General Hazen's regiment, who had suffered much by imprisonment and otherwise in Canada, and that he is now here (New York) a refugee from thence, and entitled to draw provisions as a captain under the resolution of the 9th of August, 1783, from the 1st of May last. That resolve is in these words :

" *Resolved*, The officers of the regiment lately commanded by Brigadier General Hazen, who at the commencement of the war were residents of Canada, shall continue to receive their former subsistence until the further order of Congress ; and that each of the men, women and children, referred to in the petition of the said officers, shall respectively receive a ration per day for their subsistence until such further order."

Colonel Antill again certifies, under date of December 1, 1784, at New York, that said Ayott was appointed a captain in the Canadian regiment, commanded by Moses Hazen, and that he raised a company in a very short time, and was actually employed in keeping up the blockade of Quebec and other hard services, during which time he and his men were very attentive to their duty, and behaved remarkably well upon every occasion, particularly under the command of the then Major Lewis Dubois, on the south shore below Quebec, in quelling an insurrection, in which he signalized himself for his zeal, conduct, and courage ; that a great number of his vouchers and accounts were lost, and fell into the enemy's hands with his other baggage, on their precipitate retreat from Quebec, at which time he was left behind, being uninformed of their retreat.

Lewis Dubois, lieutenant colonel of the 5th New York regiment, certifies, under date of April 24, 1784, that said Ayott commanded a

company in Canada in the years 1775 and 1776, and was an active officer, and of great service to the army while in Canada by scouting and bringing intelligence of the situation of the enemy.

James Clinton, who signs himself late brigadier general, certifies, under date of the 27th April 1784, the bearer, Captain Ayott, commanded a company in Canada, and that he was, in March and April, 1776, under his immediate command at Point Levy, and was a very active and good officer, and of great service to the army while in Canada, on several occasions, and that he belonged to Hazen's regiment, which was then raising for the United States.

The original certificates, together with the copy of the act of Congress of September 14, 1785, which is another strong fact in the case, that he was a duly commissioned captain in the service, are records on the files of the State department at Albany, New York, and are duly certified by the deputy Secretary of State, Archibald Campbell, to be correct transcripts of the records or originals, and of the whole of said originals. They are also shown to be sworn copies of said originals from the records on file at Albany aforesaid.

May Vincilet, who is certified to be a credible person, testifies that she was living with her mother at Chambly, in Canada, in 1779, who was then a widow woman, when Captain Pierre Ayott came to her mother's house from the States to spy out the condition of the country and the British forces in the Canadas, and that he made her mother's house his hiding-place while on this hazardous service; that he there married her mother, and she and her mother followed Captain Ayott into the United States, and followed him in the army through the whole war, and after the war they settled in Champlain, in the State of New York, where he died, in 1814.

John Manty, who is certified to be a credible person, testifies that he was a musician in General Hazen's regiment, and the son of Lieutenant Francis Manty, in the same regiment, and is now a pensioner of the United States for his services in said regiment during the revolutionary war; that he was well acquainted with Pierre Ayott, a captain in General Hazen's regiment, from the retreat of the American army in Canada to the close of the war; that he was with the regiment when it disbanded in 1783, and retired with the other officers and men to the Canadian frontier, after the war, and settled in Champlain, where he died; that at the end of the war he held the rank of a captain; that Captain Ayott married a connexion of his, and his father and said Ayott being officers in the same regiment, and connected by marriage, were frequently together during the whole war.

The name of Captain Pierre Ayott appears on the books of the treasury as an officer in the army of the revolution, as appears by a return made by the Secretary of the Treasury, on the 28th of June, 1856, to the Court of Claims. The return says that the accounts current of the officers of the revolution have been destroyed in the burning of the public buildings; but the revolutionary books of the office show that he had an account with the government, which stands settled and closed on the books, and that he did not receive commutation.

It appears in one of the petitions to Congress that Captain Ayott raised a company in Canada in the commencement of the war and the

invasion of Canada, and advanced \$3,000 from his private funds for the equipment of his company ; but as his vouchers were lost, the petitioner was unable to make it appear to the satisfaction of Congress. Colonel Antill, in his certificate, alludes to the loss of those vouchers, and says : " that a great number of his vouchers and accounts were lost, and fell into the enemy's hands, with his (Colonel Antill's) other baggage." Again, Colonel Antill says, " the writing which I gave you may be of use to you respecting the money." But as no claim is made for the advances, it is useful in another respect. It shows the loss of his vouchers and papers, and probably of his *commission*, as after the war he found it necessary to establish his claims through the certificates of the officers in the service. The commissioners sent to Canada were instructed to fill up blank commissions, with names of officers to the regiments to be raised there ; and the presumption is, he was duly commissioned as captain in Hazen's regiment, as the evidence is clear that he officiated as such in Canada ; and afterwards in the States, as the proof shows. He died the 15th of October, 1814. He is shown to have been an officer of the rank of captain in Hazen's regiment in the beginning of the war. There is no evidence that he was reduced, that he became supernumerary, or that he resigned. But your committee's attention has been called to the following resolution of October 3, 1780.

" That the regiment commanded by Colonel Moses Hazen be continued on its present establishment ; and that all non-commissioned officers and privates, being foreigners, belonging to any of the reduced regiments and corps, be incorporated therewith ; and all volunteers from foreign States who are now in service, or may hereafter join the American army, be annexed to said regiment." It would seem a preference, by this resolution, was given to foreigners who had come to our assistance, to be continued under the reduction of the army at this time, from which it is fair to presume that Captain Ayott was still held in service.

Again, Colonel Antill, on the 1st of June, 1784, certifies that Captain Ayott, *as a captain*, is entitled to draw provisions under the resolution of Congress of the 9th of August, 1783, from the 1st of May, 1783. That resolution is as follows :

" *Resolved*, That the officers of the regiment lately commanded by Brigadier General Hazen, who at the commencement of the war were inhabitants of Canada, shall continue to receive their former subsistence until the further order of Congress." * * * * *

The evidence in this case establishes the fact to the satisfaction of your committee that Captain Ayott continued in the service to the end of the war, and is entitled to the half-pay for life promised by the resolution of October 21, 1780.

It is stated in the petition that Pierre Ayott, at the breaking out of the revolutionary war, was an inhabitant of Canada, and the owner of two lots of land valued at \$4,000, which was confiscated in consequence of his having taken up arms against Great Britain, and in favor of the American cause, which was induced by the promises of protection and remuneration by Congress and its agents at the time, and subsequently by resolves of Congress of the 23d of April, 1783 ;

and of the second Congress in the second session promising the same. The resolution of the 23d of April, 1783, is fully set forth in the fore part of this report.

The proceedings of the second Congress referred to was "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia," approved April 7, 1798. The 1st section of this act provides for the satisfying of the claims of certain persons claiming lands under the resolutions of Congress of the 23d of April, 1783, and 13th of April, 1785, as refugees from the British provinces of Canada and Nova Scotia. The 2d section designates the description of persons entitled, their widows, and heirs, viz: "First, heads of families, and single persons, not members of any such families, who were residents in one of the provinces aforesaid prior to the 4th day of July, 1776, and who abandoned their settlements in consequence of having given aid to the United States, or in their service, during the said war, and did not return to reside in the dominions of the King of Great Britain prior to the 25th of November, 1783. Secondly, the widows, and heirs of all such persons as were actually residents as aforesaid, who abandoned their settlements as aforesaid, and died within the United States, or their service, during the said war; and, thirdly, all persons who were members of families at the time of their coming into the United States, and who, during the war, entered into their service." Section 3d designates before whom proof of the facts may be taken. Section 4th regulates the quantity of land to be allowed to the individual claimants, which was to be in proportion to the degree of their respective *services, sacrifices, and sufferings*, in consequence of their attachment to the cause of the United States; allowing to those of the first class a quantity not exceeding one thousand acres, and to the last class a quantity not exceeding one hundred, making such intermediate classes as the resolutions aforesaid and distributive justice may, in their judgment, require, and make report thereof to Congress. And, in case any claimant shall have sustained such losses and sufferings, or performed such services for the United States that he cannot justly be classed in any one general class, a separate report should be made of his circumstances, together with the quantity of land that ought to be allowed him, having reference to the foregoing ratio. The 5th section of this act fixed the period of two years in which the claim should be exhibited. It was revived and kept in force by act of February 18, 1801; March 3, 1803; March 16, 1804; February 24, 1810; April 23, 1812, for two years after each revival.

It has before been shown that said Ayott was a resident of Canada prior to the 4th of July, 1776, and that he did not return to reside there prior to the 25th of November, 1783, and that he was in the service of the United States during the said war, and died a resident of the State of New York, in 1814, poor and destitute. Also, it is shown that he was the head of a family; that in one of his journeys on secret service into Canada, in the year 1779, he married a widow woman, the owner and possessor of the property confiscated, as stated in the petition; by which marriage he became entitled to the one moiety thereof; that in consequence of her intermarrying with him they were obliged to leave; that she and her daughter both followed him into the States,

and remained with him in the army through the war; and after the war they returned to the frontier of the State of New York, and settled in Champlain, a town bordering on Canada; that they made several trials to recover their property, but were defeated, in consequence that it had been seized and confiscated by the authorities of the British government. The proof, in the opinion of the committee, failed to establish this claim, and it is therefore reported against.

This claim arises from the alleged non-fulfilment, in part, of a special resolution of Congress, passed the 14th day of September, 1785. This resolution is set forth at length in the forepart of this report. Its object and intent cannot be mistaken; and the only question for your committee is, not whether it is barred by any acts of limitation, but whether it has been fully satisfied; and to this end your committee have directed their investigation. The resolution directs the commissioner of army accounts, in liquidating the claims of Pierre Ayott, to allow him the pay and subsistence of a captain for the year 1776, deducting \$300 advanced him by the resolution of the 24th of February last, (1785;) and the further sum of \$150, in full of all expenses incurred by him in the service of the public; rations to the 1st of June, 1786, and the same quantity of lands as was assigned to the heads of other Canadian families. To a better understanding of the case, your committee's attention is directed to the following resolution, referred to in the foregoing resolution:

“*Resolved*, That the commissioner for settling the accounts of the army be and he is hereby directed, in settling the accounts of Captain Pierre Ayott, to admit to his credit the pay of a captain during the term of his serving as such in the army of the United States, or of his being held in a state of captivity, any want of form in his commission notwithstanding, and that the President draw a warrant in his favor on the treasury of the United States for \$300, to enable him to leave this city and to return to Canada, which sum shall be deducted from the balance which may appear due to him on a settlement of his accounts.”

The Register of the Treasury reports the following:

751—ARMY.

DR.

Captain Pierre Ayott.

CR.

1785. April 14	To treasury warrant..... Account furnished Comptroller	\$300	791. Balance.....	\$300
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On a further call on the Treasury Department for evidence respecting Captain Ayott's accounts, the following is furnished:

“To Jonathan Trumble, \$46; and is credited by the United States, for pay, \$46. In the second account he is credited, by pay of the army, \$454 12; and is charged to certificates issued, \$454 12. The journal that would contain the entries of the second account has been lost or destroyed.”

The claimant contends for the following interpretation of the resolve of September 14, 1785 :

Dr.

The United States to Captain Ayott.

Cr.

To captain's pay, \$40 permonth, for the year 1776.....	\$480 00	By advance on resolution of February 24 last.....	\$300 00
To subsistence, 3 rations, to cap- tain, 30 cents per day.....	190 05		
To expenses incurred.....	150 00		
To rations, for 8½ months.....	76 56		
	815 06		
	300 00		
	515 06		

To interest.

To United States land, 300 acres, (resolution of Congress, September 16, 1776.)

To 1,500 acres, (act March 27, 1783 ; N. Y.)

It is shown by the letter from the Commissioner of the General Land Office of March 12, 1853, that no land was ever patented to an individual named Pierre Ayott, a captain of the revolutionary war ; and from the Treasury Department by letter of March 16, 1853, that no payment had been made to Captain Ayott under the resolution of Congress of September 14, 1785.

It is apparent from all this testimony the resolution has never been complied with, and it is equally apparent the three hundred dollars in treasury warrants, under date of April 14, 1785, was the advance intended by the resolution of 24th of February, 1785, and that this sum should be deducted from the present claim ; and if the claimant's estimate or interpretation of the resolution is correct, which your committee see no reason to question, there was due to said Ayott, on the 14th day of April, 1785, \$515 06, and the claimants are justly entitled to the same now. In accordance with these views the committee recommend the accompanying bill.

H. Rep. 36—2

